

**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF CALIFORNIA**

**COMPLAINT OF GARY LEDFORD ON  
HIGH DESERT POWER PROJECT  
WATER ISSUES**

**DOCKET No. 97-AFC-1C (C1)  
COMPLAINT-1**

**PROPOSED DECISION ON THE COMPLAINT**

**Summary**

Mr. Gary Ledford, an Intervenor in the certification proceeding, filed a Complaint alleging that the High Desert Power Project violated or intends to violate certain Conditions of Certification related to the project's water supply plan. Mr. Ledford's proposed testimony and exhibits do not establish prima facie evidence of noncompliance with the Conditions. We find that the High Desert Power Project either has complied with the Conditions or the date for compliance has not yet occurred. We therefore dismiss the Complaint in its entirety.

**Procedural Background**

The High Desert Power Project (HDPP or "Respondent") is a 720-megawatt (MW) natural gas-fired combined cycle power plant located on the former George Air Force Base (now called the Southern California Logistics Airport) in the City of Victorville. The Commission certified the HDPP on May 3, 2000.<sup>1</sup>

Complainant Gary Ledford was an intervenor in the certification proceeding and actively participated in the review process.<sup>2</sup> After the project was certified, Mr. Ledford filed a motion for reconsideration, which the Commission denied on June 21, 2000. Mr. Ledford subsequently filed a petition for review with the California Supreme Court. The Court summarily denied review in August 2000.

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<sup>1</sup> Commission Decision on the Application for Certification for the High Desert Power Project, Docket No. 97-AFC-1, CEC Publication No. P800-00-003, May 2000.

<sup>2</sup> The certification proceeding involved more than two years of extensive environmental review and numerous public hearings, several of which were devoted to Mr. Ledford's concerns regarding the project's water plan.

The Commission's certification decision imposes certain Conditions of Certification that HDPP must implement during construction and operation of the project. One of the Conditions requires HDPP to submit final design drawings of the project's water supply facilities to the Commission prior to construction. HDPP submitted its final design drawings on March 27, 2001. The Commission's compliance staff authorized construction of the HDPP on May 17, 2001. HDPP expects to commence commercial operation in the spring of 2003.

### **HDPP's Water Plan**

HDPP will use State Water Project (SWP) water for cooling and makeup water needs. The SWP water will be conveyed to the project site via a 2.5-mile long pipeline ("Northern Pipeline"), which would interconnect with the Mojave River pipeline. The SWP water will be used either directly for cooling at the power plant or, after treatment by the HDPP water treatment facility, be injected for storage in the Mojave River aquifer and banked through a series of wells six miles from the site. Water from the wells would be conveyed to the project by a 6.5-mile pipeline ("Southern Pipeline"). The creation of the water bank will allow HDPP to procure SWP water when available and store it for later use.

There are several water agencies involved in implementing the water plan, including the Mojave Water Agency (MWA) that will procure SWP water for HDPP, the Victor Valley Water District (VVWD) that will store the banked water in the storage wells, and the Lahontan Regional Water Quality Control Board (Lahontan RWQCB) that will monitor water quality of the treated water injected into the wells.

### **The Complaint**

On October 11, 2001, Mr. Ledford filed a Complaint alleging that HDPP has violated or intends to violate certain Conditions of Certification related to HDPP's water plan.<sup>3</sup> On November 9, 2001, the Chairman of the Commission issued a

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<sup>3</sup> Complainant Ledford also filed two other documents: a "Motion to Show Cause and Compel Compliance with Conditions" and a "Request for Investigation to Determine Whether Certification was Granted Based on Applicant's Fraud; Perjured Testimony; Deceit; or Bad Faith." By Order dated November 9, 2001, the Chairman of the Commission dismissed those two filings. See Order Dismissing the Request for Investigation and Order to Show Cause, Nov. 9, 2001, Docket

Notice of Complaint Proceeding and Order Establishing Scope of Proceeding and Setting Schedule. The Chairman designated the Commission's Siting Committee ("Committee") to conduct the proceeding.

During the certification proceeding, Complainant Ledford challenged HDPP's water plan on several grounds. Mr. Ledford asserted, *inter alia*, that the water supply pipeline would be oversized and that the HDPP's water treatment facility would be used for purposes other than treating water for project use. In the certification decision, the Commission considered and rejected those assertions. Mr. Ledford raised similar concerns in the Complaint.

The November 9, 2001, Notice of Complaint Proceeding limited the scope of the Complaint to the following issues:

Whether Conditions of Certification Soil & Water 1e, 2, 11, 12, 13, 17(1), and 19 have been violated and if so, what action to take.<sup>4</sup> Specifically:

1. Are HDPP's water treatment facilities bigger than necessary for the power plant, and will additional water be treated by those facilities for non-HDPP purposes? (Conditions 1e, 17(1), 19);
2. Is HDPP using the proper type of water treatment facilities, and will those facilities fail to provide water "approaching background water quality levels?" (Conditions 12, 13); and
3. Has HDPP failed to provide to the Commission various documents concerning water use and supply? (Conditions 2, 11, 12, 17, 19).

On December 5, 2001, the Committee issued a Notice of Evidentiary Hearing and Order Setting Schedule for Filing Answer and Witness Lists. On December 28, 2001, the Committee issued a Notice of Prehearing Conference and Order to Produce Compliance Documents.

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No. 97-AFC-1C (C1). Section 1230 et seq. of the Commission's regulations governs complaint and investigation proceedings. (See Cal. Code Regs., tit. 20, § 1230 et seq.)

<sup>4</sup> The text of each of the relevant Conditions is included in Appendix A attached hereto. Unless otherwise indicated in the text of this Decision, citations to specific Conditions of Certification refer solely to Soil & Water Conditions.

Respondent HDPP timely filed its Answer on January 7, 2001. The parties filed their Position Statements on January 11, 2001. The Committee conducted a Prehearing Conference on January 14, 2001, at which all parties appeared. At the Prehearing Conference, the Committee canceled the evidentiary hearing that had been scheduled by the Notice of Evidentiary Hearing. On January 14, 2001, after considering the proposed testimony and documentary evidence submitted by the parties, the Committee also issued a Ruling on the Pleadings, dismissing several allegations contained in the Complaint. The Committee's Ruling and the remaining issues related to the Complaint are discussed below.

### **Allegations Dismissed by the Committee's Ruling on the Pleadings**

The Committee's Ruling on the Pleadings dismissed the allegations regarding Conditions of Certification Soil & Water 1e, 2, 13, 17(1), and 19. Our review of the proposed testimony and exhibits revealed that HDPP either has complied with or the deadline has not yet occurred for compliance with those Conditions. Complainant did not offer any proposed testimony that, if heard by the Committee, would have changed these findings.<sup>5</sup>

#### *Condition 1e*

Complainant claims that the project's water supply pipeline is oversized and will allow excess water to be treated for non-HDPP purposes. Complainant also asserts that the water treatment facilities have the capacity to treat more water than necessary for project use. Condition 1e requires the project's water supply facilities to be appropriately sized to meet project needs. Testimony in the certification proceeding indicated that pipe sizes were developed by HDPP's engineers to meet only the project's needs.<sup>6</sup> (Feb. 18, 2000 RT at 117:14-25.)

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<sup>5</sup> Much of Complainant's proposed testimony consists of email communications and other memoranda between the staffs of the water agencies and Commission staff, which represent the review process but not the final agency determinations on the issues. Further, Complainant submitted proposed testimony of witnesses who had testified on his behalf during the certification proceeding and whose testimony consists of opinion and conjecture rather than factual information.

<sup>6</sup> Respondent HDPP filed proposed testimony in the Complaint proceeding that includes engineering calculations showing that the 24-inch diameter pipeline is appropriately sized to meet project needs. Since the pipe is sized for peak demand, there will be, at times, underutilized capacity in the pipeline. (Exhibits to Respondent's Position Statement, Jan. 15, 2002, Prepared Testimony of Andrew C. Welch, at p. 4.)

The certification decision found that the design capacity of project pipelines includes “peak” not “average” water flows to provide transport both for cooling and injection for storage. (Commission Decision at p. 227.)

The certification decision also found that the project would need approximately 4,000 acre-feet of water per year for cooling. (Commission Decision at p. 213.) The water treatment facilities, however, must be adequately sized to simultaneously provide for both plant cooling and groundwater injection to meet the requirement that 13,000 acre-feet (a three-year supply plus 1,000 acre-feet) be banked during the first five years of project operation. (Condition 4.)

At the Prehearing Conference, the parties stipulated that the Northern water supply pipeline is designed to be 24 inches in diameter. This pipe size has not changed since HDPP’s initial project design was described in the certification proceeding. Nor has the design for the Southern Pipeline changed, which was described as 18 inches in diameter.<sup>7</sup>

The Conditions of Certification collectively ensure that HDPP’s use of water is limited to project needs. Condition 17 requires the Aquifer Storage and Recovery Agreement to establish baseline water production of neighboring wells and HDPP wells may not exceed that production in the combined use of its wells and neighboring wells. Condition 18 provides for flow metering on all water injected and pumped from the wells. Condition 19 prevents use of the HDPP water treatment facility for purposes other than project needs.

During the certification proceeding, we previously considered and rejected Complainant’s assertions that the water supply pipelines and treatment facilities would be oversized. Complainant may not relitigate the issue in a Complaint proceeding. As required by the verification for Condition 1e, HDPP submitted its final design drawings of the project’s water supply facilities thirty days prior to commencing construction. (See Exhibit L to Respondent’s Answer to Complaint.) We recognize that the type of treatment facility was subsequently amended in consultation with the responsible water agencies. (See discussion

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<sup>7</sup> See, e.g., Exhibits 14 and 123 in the certification record; see *also*, Mar. 26, 2001, letter to Shirley Pearson from Bibb and Associates in Exhibit L to Respondent’s Answer to Complaint.

below regarding Conditions 11 and 12.) However, this does not change the limits on non-HDPP water use established by the Conditions. The allegations regarding Condition 1e are therefore dismissed with prejudice.

#### *Condition 2*

Condition 2 requires HDPP to submit a Water Storage Agreement (WSA) between the Mojave Water Agency and the Victor Valley Water District prior to initiation of any groundwater banking. The parties stipulated that groundwater banking would not commence until approximately September 2002. The Mojave Water Agency expects to finalize the WSA by the end of January 2002. There is no indication that HDPP will fail to submit the WSA in a timely manner. Allegations of noncompliance with this Condition are speculative and not ripe for review. We therefore dismiss the allegations regarding Condition 2 without prejudice.

#### *Condition 13*

Condition 13 requires HDPP to implement the approved water treatment and monitoring plan and submit monitoring results on an annual basis. The Lahontan RWQCB has not yet approved a water treatment and monitoring plan nor has HDPP completed construction of its water treatment facility. Lahontan is currently reviewing HDPP's proposed water treatment plan. (See discussion of Condition 12, below.) Since there is no requirement that such plan be in effect at the current time, the allegations of noncompliance with this Condition are speculative and not ripe for review. We therefore dismiss the allegations regarding Condition 13 without prejudice.

#### *Condition 17(1)*

Condition 17(1) requires HDPP to enter into an Aquifer Storage and Recovery Agreement (ASRA) with the Victor Valley Water District (VVWD). The ASRA shall prohibit VVWD from producing or allowing others to produce water from project wells for purposes other than use by the HDPP. The verification to this Condition requires HDPP to submit the ASRA prior to commencing project construction. HDPP submitted the ASRA to the Commission in February 2000,

when it was received as Exhibit 145 in the certification proceeding. The ASRA incorporated the Conditions of Certification as proposed at that time. The Conditions were subsequently revised by the Commission upon adoption of the certification decision in May 2000.

Complainant argues that the VVWD voided the ASRA upon reviewing the final Conditions of Certification adopted by the Commission. Respondent HDPP and the VVWD maintain that the ASRA remains in effect and each submitted letters to the Commission in October 2001, clarifying that the final Conditions of Certification apply to the ASRA.<sup>8</sup> In its Ruling on the Pleadings, the Committee directed Respondent to submit a codicil to the ASRA that would incorporate the final Conditions of Certification and explain any discrepancies between the ASRA and the Conditions as adopted by the Commission. Respondent filed a signed and fully executed codicil on January 18, 2002.

We need not consider Complainant's assertion that VVWD will use banked water for purposes other than HDPP's water banking program. Complainant raised the same issue during the certification proceeding and we adopted Conditions 17 and 19 (see below) to address this concern. Complainant cannot now argue either that the ASRA allows HDPP to violate the Conditions or that VVWD will cause HDPP to violate the Conditions. This is a speculative argument that is wholly unsupported by the record. (See Commission Decision at pp. 225-226.) We find HDPP has complied with Condition 17(1). The allegations in the Complaint concerning Condition 17(1) are dismissed with prejudice.

### *Condition 19*

Condition 19 provides that HDPP shall limit any use of its water treatment facilities by the VVWD or another entity for purposes other than banking water for the HDPP. Further, HDPP shall not allow VVWD or another entity to use the treatment facilities for treatment of water that is injected and then recovered by VVWD unless the Mojave Water Agency (MWA) and the VVWD have entered a WSA agreement for which a California Environmental Quality Act (CEQA) review has been completed in accordance with MWA Ordinance 9. The verification

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<sup>8</sup> See Exhibits N and O attached to Respondent's Answer.

requires HDPP to submit a copy of any WSA between the MWA and the VVWD, incorporating these restrictions, within thirty days of its execution.

The WSA described in Condition 19 does not exist. There is no indication that HDPP would fail to submit such a WSA if executed in the future. The allegations of noncompliance with Condition 19 are wholly speculative and not ripe for review. We therefore dismiss the allegations regarding Condition 19 without prejudice.

### **Allegations Concerning Noncompliance with Conditions 11 and 12**

#### *Condition 11*

Condition 11 requires HDPP to submit an approved Waste Discharge Requirement (WDR) *prior to the start of groundwater banking* unless the Lahontan RWQCB waives the waste discharge requirement. The time for filing the WDR in the verification to the Condition is inconsistent with the language of the Condition. The verification requires a copy of the WDR *within sixty days of the start of rough grading*. To clarify the time for filing the WDR, the language of the Condition controls. The Commission adopted the Condition based upon the evidentiary record, which reflects consultation with the parties and the relevant water agencies. The verification is written primarily to enable Staff to track compliance with the Condition. We therefore revise the verification language to be consistent with the Condition as follows:

“Verification: The project owner shall submit a copy of the approved Waste Discharge Requirement [or a waiver of the Waste Discharge Requirement](#) from the Lahontan RWQCB to the CEC CPM [prior to the start of any groundwater banking](#)~~within sixty days of the start of rough grading~~.”

HDPP submitted to Lahontan RWQCB a Report of Waste Discharge (RWD) and Antidegradation Analysis in May 2001. HDPP provided supplemental information on June 20, 2001, June 29, 2001, and July 30, 2001, as well as a supplement to



the Antidegradation Analysis on August 23, 2001.<sup>9</sup> Based on this information, the Lahontan staff prepared a draft Conditional Waiver of WDR for the RWQCB's consideration.<sup>10</sup> Proposed Condition 3.f. in the draft Conditional Waiver of WDR states that "[b]anking of SWP water in amounts larger than HDPP needs as described in the RWD (approximately 13,000-acre feet, plus 333-acre feet per year) is prohibited and necessitates a revised RWD." (Draft Conditional Waiver of Waste Discharge Requirements et al., Nov. 9, 2001, at p. 6.) Those limits reflect the calculations established in Conditions of Certification Soil & Water 4, 5, and 6. We therefore find no new evidence that HDPP intends to use SWP water for purposes other than project needs.

The Lahontan staff relied on the Commission's CEQA review of the project in recommending the Conditional Waiver of WDR. Lahontan staff also prepared a draft CEQA addendum to address any potential environmental impacts of the groundwater banking proposal.<sup>11</sup> The draft CEQA addendum found that "HDPP's potential impacts to groundwater are insignificant." (Oct. 23, 2001, draft CEQA Addendum at p. 9.) The Lahontan RWQCB has scheduled a meeting in February 2002, to consider the Conditional Waiver of WDR.

We find that Respondent HDPP is currently in compliance with Condition 11. HDPP is in the process of obtaining a waiver of the WDR, which would fulfill the requirements of Condition 11. If the Lahontan RWQCB declines to grant the waiver, HDPP must submit an approved WDR prior to the start of groundwater banking. With our clarification of the verification deadlines for Condition 11, the time for submitting either the waiver or the WDR has not yet occurred. The

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<sup>9</sup> See the *May 2001, Report of Waste Discharge and Antidegradation Analysis* included as Exhibit P in Respondent's Answer to Complaint. Copies of the supplements were included as Exhibits Q, R, S, and U in the Answer. The RWD documents were submitted to the Commission's compliance staff on June 21, 2001, and concurrently thereafter when submitted to Lahontan. See also June 21, 2001, Letter to Steve Munro, Compliance Project Manager regarding Conditions Soil & Water 11 and 12, included as Exhibit W in the Answer.

<sup>10</sup> See Proposed Resolution approving a Conditional Waiver of Waste Discharge Requirements Victor Valley Water District and High Desert Power Project Limited Liability Corporation, High Desert Power Plant – Ground Water Operation, San Bernardino County and the draft Conditional Waiver of WDR, Nov. 9, 2001, submitted as part of Exhibit V to Respondent's Answer.

<sup>11</sup> See draft CEQA Addendum, Oct. 23, 2001, submitted as part of Exhibit V to Respondent's Answer.

allegations concerning noncompliance with Condition 11 are therefore dismissed without prejudice.

### *Condition 12*

Condition 12 requires HDPP to submit a water treatment and monitoring plan that specifies the type and characteristics of the treatment processes and identifies any waste streams and their disposal methods. The plan must include the proposed monitoring and reporting requirements identified in HDPP's Report of Waste Discharge (Bookman-Edmonston 1998d), which is part of the evidentiary record.<sup>12</sup> Condition 12 further requires that treatment of water prior to injection must be "to levels approaching background water quality levels of the receiving aquifer or shall meet drinking water standards, whichever is more protective." The verification to Condition 12 requires submittal of the water treatment plan ninety days prior to banking SWP water.

Complainant Ledford alleges that HDPP is not using the proper type of water treatment facilities, and that the proposed treatment will not result in water approaching background water quality levels. Specifically, Complainant contends that Condition 12 requires reverse osmosis (RO) as the method to treat SWP water prior to injection. Although HDPP discussed RO during the certification proceeding, neither the Commission Decision nor Condition 12 requires the implementation of a specific design for water treatment. Rather, Condition 12 establishes a performance approach that must meet certain water quality standards.

HDPP's final design drawings of its water supply facilities, which were filed on March 27, 2001, included RO as the water treatment method. (Exhibit L to Respondent's Answer.) Subsequently, HDPP revised the plans during the WDR review process. HDPP now proposes to use conventional water treatment methods (coagulation, sedimentation, and filtration) to remove total dissolved solids (TDS) and organic constituents from SWP water prior to injection. HDPP

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<sup>12</sup> The 1998 Report identified in Condition 12 was updated in HDPP's May 2001, Report of Waste Discharge and Antidegradation Analysis by Bookman-Edmonston (consultants to HDPP) and in subsequent supplements thereto. Lahontan's review of HDPP's water treatment plan includes the initial 1998 RWD and its supplements.

consulted with staff from Lahontan RWQCB, the Department of Health Services, the VVWD, and the Energy Commission in the choice of this water treatment method. (See Exhibits P-W to Respondent's Answer.) The water agencies believe the ultrafiltration process is reliable in removing pathogens and will result in meeting both primary and secondary drinking water standards.

Complainant Ledford is specifically concerned that the TDS concentrations in the injected water would be about 50 percent above background levels in the aquifer near the injection wells. According to HDPP, water treatment would result in TDS levels averaging 248 mg/l, which is well below the secondary drinking water standard of 500 mg/l.<sup>13</sup> The Complainant contends this would not comply with the requirement of Condition 12 for water treatment to result in TDS levels approaching background water quality. The existing background level of TDS in the aquifer is estimated at 165 mg/l.

Commission staff asserts that the RO process was initially considered to achieve TDS levels equivalent to the groundwater in the injection area. However, little consideration was given to treatments that would disinfect the SWP water prior to injection. Although RO would reduce TDS concentrations to meet background levels, primary drinking water standards are the more important focus because they regulate constituents that have potential adverse health effects. (See Staff's Jan. 11, 2001, Position Statement, at pp. 7-8.) Secondary contaminant levels for TDS constituents are not based on risk to human health or the environment, but rather on aesthetic concerns such as odor and taste.

The proposed findings for the Conditional Waiver of Waste Discharge Requirements address Mr. Ledford's concerns regarding increased TDS levels in the aquifer near the injection wells. (See Exhibit V to Respondent's Answer.) Proposed findings 8c and 8d are particularly relevant to our present inquiry.

Finding 8c: The water quality changes will not result in water quality less than prescribed in the Basin Plan because the injected SWP water will meet all California Code Regulations, Title 22 Drinking Water Standards and Basin Plan Objectives. Further, the resulting groundwater after 30 years of mixing will have a TDS concentration of

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<sup>13</sup> See Exhibit P to Respondent's Answer: Report of Waste Discharge at § 7.

about 200 mg/l, less than ½ of the secondary drinking water standard. (Proposed Conditional Waiver at p. 3.)

Finding 8d: The project is consistent with the use of best practicable treatment or control to avoid pollution or nuisance and maintain the highest water quality consistent with maximum benefit to the people of the state because the additional costs associated with using reverse osmosis technology are not warranted when considering the degree of treatment provided with ultrafiltration. (Proposed Conditional Waiver at p. 3.)

The language of Condition 12 is ambiguous. Complainant argues that HDPP's water treatment method should result in levels not *exceeding* background water quality levels for TDS and that any degradation of the aquifer (changing TDS levels) would violate the Condition. Respondent offers a different interpretation, claiming that levels of TDS may exceed the background levels if the long-term effect does not violate state drinking water standards. Staff seems to argue that even if TDS levels exceed background levels, the primary concern is prevention of adverse health effects.

We look at the directive in the context of the disjunctive statement in Condition 12, i.e., water treatment must attain "levels approaching background water quality levels... *or* shall meet drinking water standards, *whichever is more protective*." To clarify this requirement, we find the essential question is whether maintaining the existing TDS levels *or* meeting drinking water standards is "more protective of *public health*." Complainant's interpretation also has merit since the sentence could be read as "more protective *of existing TDS levels*." We believe, however, that the issue has been resolved under both interpretations. The CEQA addendum prepared by the Lahontan staff concludes that over the life of the project:

There will be no measurable change in TDS concentrations in the Regional aquifer at the closest drinking water wells (VVWD Well Nos. 21 and 27). Increased TDS concentrations in the Regional Aquifer will thus create little or no change in the background water quality of the Mojave River or the Mojave River alluvial aquifer. The ultimate level of degradation, 30 mg/l TDS above pre-project conditions, is not significant. (Nov. 21, 2001, CEQA Addendum at p. 7.)

The Lahontan staff found that the treated water meets or exceeds Title 22 drinking water standards, which are deemed health protective. The state's regulatory scheme for drinking water standards establishes the "more protective" result. The responsible water agencies have indicated that the proposed water treatment method will meet both primary and secondary drinking water standards. We accept their findings.

The time for filing the water treatment and monitoring plan has not yet occurred; however, HDPP has already submitted its proposed plan and consulted with the appropriate water agencies as described above. The plan must reflect any requirements imposed by the Lahontan RWQCB as directed in the verification. There is no indication that HDPP will fail to comply with the requirements of Condition 12. We therefore dismiss the allegations regarding noncompliance with Condition 12 without prejudice.

### **Complainant's Discovery Requests**

On December 20, 2001, Complainant filed several requests for subpoenas to compel witnesses to attend the evidentiary hearing scheduled in this matter. On December 28, 2001, Complainant filed an "Ex Party (sic) Motion to Show Cause..." to compel Commission staff to provide documents, which Staff had removed from compliance files on grounds of privilege.

The Committee did not have enough information to rule on the subpoena requests or the motion, which were submitted prior to the deadlines for receipt of Respondent's Answer and the parties' Position Statements. At the Prehearing Conference on January 14, 2002, the Committee canceled the evidentiary hearing and subsequently dismissed several of the allegations in the Complaint. (See Jan. 14, 2002, Committee Ruling on the Pleadings.) Since we uphold the Committee's ruling and dismiss all the allegations in the Complaint, the subpoena requests are moot and we need not consider them.

We note, however, that Complainant wished to subpoena staff from the responsible water agencies, including the Lahontan RWQCB, the VVWD, the Mojave Water Agency, the City of Victorville, and technical staff from the Energy

Commission. The regulatory scheme established by CEQA<sup>14</sup> and the Warren-Alquist Act<sup>15</sup> contemplates that the responsible governmental agencies will provide relevant information to the Commission in a cooperative manner. They have done so. Moreover, we rely on the official documents, reports, and recommendations of the agencies, not their staffs' notes or preliminary opinions. With respect to the request to subpoena a Commission staff member, we would direct any staff member to attend evidentiary hearings if we believed such attendance was necessary and relevant. In this case, it is not.<sup>16</sup>

Complainant Ledford exercised his right to file Public Records Act (PRA)<sup>17</sup> requests with each of the water agencies identified in his subpoenas. We have no authority to mediate any dispute that Complainant may have with those agencies concerning his PRA requests.

Complainant also filed a PRA request with Energy Commission staff for documents in the compliance files. Staff provided documents as requested except for certain documents deemed privileged by staff attorneys. In his Motion to Show Cause, Complainant argues that the public interest requires disclosure of those documents. Staff contends that the redacted documents are protected from disclosure either by attorney-client privilege or deliberative process privilege, which protects internal communications, notes, and other evidence of the agency decision-making process. Resolution of any remaining issues related to that dispute shall be determined in accordance with the procedures set forth in Section 2501 et seq. of the Commission's regulations. (Cal. Code of Regs., tit. 20, § 2501 et seq.) Complainant's Motion to Show Cause is denied.

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<sup>14</sup> Public Resources Code section 21000 et seq.

<sup>15</sup> Public Resources Code section 25000 et seq.

<sup>16</sup> Complainant seeks the testimony of a Commission staff member on the issue of whether Respondent has complied with Condition 12. We find that Respondent has complied based on the documents submitted and the concurrence of the responsible agencies. No testimony is necessary.

<sup>17</sup> Government Code section 6250.

## Findings and Conclusions

1. HDPP's water supply pipelines and water treatment facilities are properly sized to meet only project needs.
2. The Aquifer Storage and Recovery Agreement is in effect and prohibits HDPP from allowing additional water to be treated by the project's water treatment facilities for non-HDPP purposes.
3. Complainant's allegations concerning noncompliance with Conditions Soil and Water 1e and 17(1) are erroneous and unsupported by the record.
4. HDPP has complied with Conditions Soil and Water 1e and 17(1).
5. Complainant's allegations concerning noncompliance with Conditions Soil and Water 2, 11, 13, and 19 are speculative and not ripe for review.
6. HDPP's request for a Conditional Waiver of Waste Discharge Requirements is currently pending before the Lahontan RWQCB.
7. In conjunction with the Conditional Waiver process, the Lahontan RWQCB reviewed HDPP's Degradation Analysis and prepared a CEQA Addendum, which concludes that HDPP will not cause significant adverse environmental impacts to groundwater.
8. An approved Conditional Waiver of Waste Discharge Requirements by the Lahontan RWQCB will satisfy the requirements of Conditions of Certification Soil & Water 11 and 12.
9. HDPP's water treatment facilities will produce water that exceeds certain TDS levels in the receiving aquifer but does not violate the state's Title 22 primary and secondary drinking water standards.
10. HDPP has filed all the required compliance documents currently due under the Conditions of Certification Soil & Water 1e, 2, 11, 12, 13, 17(1), and 19.
11. Complainant's proposed testimony and exhibits do not establish prima facie evidence of noncompliance with the Conditions of Certification.
12. Complainant's subpoena requests are moot.

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## **Ruling**

- The allegations regarding noncompliance with Conditions of Certification Soil & Water 2, 11, 12, 13, and 19 are dismissed without prejudice.
- The allegations regarding noncompliance with Conditions of Certification Soil & Water 1e and 17(1) are dismissed with prejudice.
- The Complaint is dismissed in its entirety.
- Complainant's discovery requests are denied.

Dated January 29, 2002, at Sacramento, California.

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ROBERT A. LAURIE  
Commissioner and Presiding Member  
High Desert Complaint Committee

-original signed by-

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ROBERT PERNELL  
Commissioner and Associate Member  
High Desert Complaint Committee